

## IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In re the Matter of the Parentage of	)	
	)	No. 61927-6-I
A.G.B. (11/11/2004)	)	
D.L.P. (09/15/2006)	)	DIVISION ONE
	)	
JENNIFER ANN PASHELK,	)	UNPUBLISHED OPINION
	)	
Appellant,	)	
	)	
and	)	
	)	
MICHAEL ALLEN BOSTROM,	)	FILED: February 1, 2010
	)	
Respondent.	)	

Grosse, J. — Where the record supports the trial court’s finding under RCW 26.09.191(3)(b) that a parent suffers from a “long-term emotional or physical impairment which interferes with the parent’s performance of parenting functions” the court has discretion to limit the parent’s contact with the children. Here, the trial court properly relied on the testimony of a psychologist who conducted an examination of the mother, other records and testimony regarding the mother’s emotional and psychological condition, and the court’s own observations. The court did not abuse its discretion in determining that it was in the best interests of the children that contact with the mother be limited because of her serious mental health problems. Accordingly, we affirm the residence provisions and contact restrictions ordered in the parenting plan.

### FACTS

Jennifer Pashelk and Michael Bostrom had two sons: A.G.B., age 3, and D.L.P., age 1.<sup>1</sup> The parties had lived together for several years when their sons were born. Pashelk's older daughter, J.P., also lived with them. Pashelk had told Bostrom that J.P.'s father was allowed to have no involvement with her because he had tried to kill J.P. some years before.

In May 2007, Pashelk was hospitalized after hearing voices telling her to kill Bostrom and A.G.B. A Child Protective Services (CPS) dependency investigation followed, which resulted in a family safety plan that included daycare for the children so that Pashelk would never be left alone with them. Pashelk and Bostrom were each required to obtain psychological evaluations. Bostrom was also required to obtain a domestic violence assessment because of Pashelk's allegations that he had abused her.

In a separate proceeding, Pashelk obtained a temporary restraining order prohibiting Bostrom from contact with her and the children. As a result, he was required to vacate the family home. With no one to supervise Pashelk's contact with the children, CPS took custody of them.

On August 8, 2007, Pashelk filed the parentage action here at issue. Pashelk sought an order that the children reside with her. On August 9, however, the Department of Social and Health Services (DSHS) filed a dependency action based on the CPS investigation. Bostrom later succeeded in having the separate restraining order dismissed and a shelter care order in the

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<sup>1</sup> These were their ages at the time of trial.

dependency action eventually placed the parties' children with Bostrom in the family home. The children remained with Bostrom pending trial in the parentage action, which occurred during May and June of 2008.<sup>2</sup>

Pashelk represented herself at trial. She testified on her own behalf and called her mother and a friend as additional witnesses. Bostrom testified and called the DSHS caseworker assigned to the dependency actions and psychologist Dr. Kristina Franey, who had evaluated Pashelk in the fall of 2007. The volunteer guardian ad litem (VGAL), Bob Dahlstrom, also testified.

Dr. Franey diagnosed Pashelk as suffering from delusional disorder, persecutory type, and post-traumatic stress disorder. Additional evidence established Pashelk's history of auditory and visual hallucinations, drug abuse, and treatment for depression and adjustment disorder. Witnesses for Bostrom also testified to Pashelk's erratic behavior in dealing with her children, DSHS and CPS, and to the falsity of her claims of abuse by Bostrom. Witnesses for Pashelk provided contrary testimony.

At the conclusion of the trial, the court found that Pashelk suffered from severe long-term mental health problems that interfered with her performance of parenting functions.<sup>3</sup> The court found that while Pashelk loved her children very

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<sup>2</sup> The dependency action regarding A.G.B. and D.L.P. was not set for fact-finding and was effectively held in abeyance in the meantime, leaving the shelter care order in place without any actual determination that either of the boys was dependent. J.P. was placed in foster care. Contrary to Pashelk's claims to Bostrom and others, DSHS verified that J.P.'s biological father was not legally prohibited from contact with her. By the time of trial, J.P. had begun regular contact with her father. The dependency action regarding A.G.B. and D.L.P. was ultimately dismissed after the trial in the parentage action.

much, allowing her unsupervised contact would have an adverse effect on their best interests. The court accordingly established a residential schedule limiting Pashelk's time with the children to six hours of supervised contact per week.

Pashelk appeals.

### ANALYSIS

Pashelk challenges the residential schedule in the parenting plan, which restricts her contact with the children under RCW 26.09.191(3)(c). Although she makes several assignments of error, to the extent specific claims in her pro se brief are discernible, most of her arguments flow from the premise that Dr. Franey, the VGAL, and all CPS and DSHS workers assigned to her case were biased against her and prepared untruthful reports that the court improperly admitted and relied on to rule against her.<sup>4</sup> The record, however, shows the trial court had a proper basis to reject Pashelk's claims of bias and conspiracy and to support its findings regarding the best interests of the children.

A trial court has wide discretion in setting the terms of a parenting plan

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<sup>3</sup> In its oral findings, the court noted particular instances of Pashelk's strange demeanor in the courtroom, of which Pashelk seemed to be unaware, that were consistent with the description of her condition provided by Dr. Franey and others.

<sup>4</sup> Pashelk also assigns error to the trial court's failure to continue the proceedings for her to obtain counsel. The record, however, shows she had previously been represented by two different attorneys, who each withdrew from representing her before trial. In denying her motion to continue, the trial court made the supported finding that Pashelk offered no specific information about any new attorneys she had talked to about representing her, or even provided a date by which she could anticipate obtaining new counsel. Accordingly, the court did not err in denying her motion to continue. State v. Downing, 151 Wn.2d 265, 272, 87 P.3d 1169 (2004) (trial court's ruling on a motion to continue is reviewed for an abuse of discretion).

and we will not reverse its decision unless it was manifestly unreasonable or based on untenable grounds or reasons.<sup>5</sup> We do not review the trial court's credibility determinations, nor can we weigh conflicting evidence.<sup>6</sup> "So long as substantial evidence supports the finding, it does not matter that other evidence may contradict it."<sup>7</sup> Substantial evidence is that which is sufficient to persuade a fair-minded person of the truth of the matter asserted.<sup>8</sup>

RCW 26.09.191 provides for both mandatory and discretionary restrictions on parenting plans. RCW 26.09.191(3) gives the court discretion to limit any provision of the parenting plan if it finds that "[a] parent's involvement or conduct may have an adverse effect on the child's best interests," and if any of several specified factors exist, including "[a] long-term emotional or physical impairment which interferes with the parent's performance of parenting functions."<sup>9</sup>

The record shows DSHS initially assigned another psychologist to evaluate Pashelk in the fall of 2007. After Pashelk failed to attend scheduled appointments or otherwise cooperate with the evaluation, she received DSHS's approval to hire her own evaluator, Dr. Franey. When Dr. Franey reached conclusions unfavorable to Pashelk, however, Pashelk unsuccessfully sought to suppress Dr. Franey's evaluation and prevent her from testifying.

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<sup>5</sup> In re Marriage of Littlefield, 133 Wn.2d 39, 46-47, 940 P.2d 1362 (1997).

<sup>6</sup> In re Marriage of Rich, 80 Wn. App. 252, 259, 907 P.2d 1234, review denied, 129 Wn.2d 1030, 922 P.2d 97 (1996).

<sup>7</sup> In re Marriage of Burrill, 113 Wn. App. 863, 868, 56 P.3d 993 (2002).

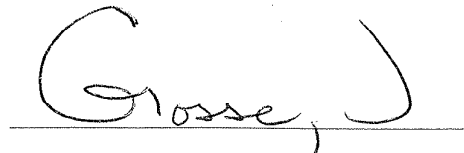
<sup>8</sup> Bunch v. King County Dep't of Youth Servs., 155 Wn.2d 165, 179-80, 116 P.3d 381 (2005).

<sup>9</sup> RCW 26.09.191(3)(b).

Notwithstanding Dr. Franey's concession on cross-examination that her investigation and evaluation could have been more thorough, Dr. Franey's conclusions regarding Pashelk's psychological condition were all well-supported. Nothing in the record suggests that Dr. Franey was biased or that the trial court erred in any way by relying on her expert testimony.

Similarly, Pashelk relies on evidence she presented to argue the testimony of the VGAL and the other witnesses Bostrom presented was biased and perjured. But the evidence was conflicting.<sup>10</sup> The trial court resolved these conflicts against Pashelk based on the persuasiveness of the testimony and Pashelk's behavior and demeanor during the trial. As the finder of fact, the court was entitled to do so. On this record, the court had a more than adequate basis to reject Pashelk's claims of bias and conspiracy and to enter the findings it did.

We find no indication that the trial court abused its discretion in any respect, and accordingly affirm.

A handwritten signature in cursive script, reading "Grosse, J.", is written over a horizontal line.

WE CONCUR:

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<sup>10</sup> Pashelk admitted she had heard voices telling her to kill Bostrom and A.G.B. in May 2007, but disputed evidence about other manifestations of her mental disorder, which included other instances of auditory hallucinations and concern with ghosts and alleged sexual assaults on her or J.P. Pashelk contended reports of these incidents were either the result of misdiagnosis, inaccurate reporting, or bias and malice by Bostrom and his supporters.

Leach, J.

Jan, J.